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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/457,847	12/09/1999	TOAN TRINH	7114	8139

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EXAMINER

MOORE, MARGARET G

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/457,847

Applicant(s)

TRINH ET AL.

Examiner

Margaret G. Moore

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 to 63 is/are pending in the application.
- 4a) Of the above claim(s) 2 to 11, 16 to 32, 43, 58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 12 to 15, 33 to 42, 44 to 57, 59 to 63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 1712

1. Applicant's election with traverse of Group I, the shape retention polymer of claim 13 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that the Examiner has provided no reasoning or examples of how the present claims define inventions that are independent and distinct and no reasoning or examples to show how there is a serious burden on the Examiner. This is not found persuasive because paragraph 2 of the office action paper number 4 provides reasoning as to why the groups are considered to be distinct. Since the search areas required for the different groups are different (as indicated in paper number 4) a burden is placed on the Examiner, and since the examination and determination of patentability for Groups I and II are separate, this places a serious burden on the Examiner. With regards to applicants' statement that the inventions are all classified in class 524, the Examiner notes that they have differing subclasses and require separate searches.

The requirement is still deemed proper and is therefore made FINAL.

2. In view of the election of the shape retention polymer of claim 13, claims 1, 12 to 15, 33 to 42, 44 to 57 and 59 to 63 are currently under consideration, as reading upon this elected species.

3. Claim 43 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected composition, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

4. Claims 1, 12 to 15, 33 to 42, 44 to 57 and 59 to 63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants use the phrase "weight average diameter" but it is not clear what this means. The Examiner has been unable to find any mention in literature of "weight average diameter" as a unit of measurement. Page 63 of the instant specification states that the diameter is the "Sauter mean particle diameter" but this does not appear to include a "weight average" diameter. Clarification is requested.

Art Unit: 1712

5. Claim 55 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 55 indirectly depends upon claim 1, which requires a diameter of about 10 to about 120 microns. The diameter limitation of claim 55 is broader than claim 1.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 12 to 15, 33 to 38, 44 to 46, 51 to 53 and 55 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Vogel et al.

Art Unit: 1712

Vogel et al. teach wrinkle reducing compositions. See for instance column 4, which teaches the presence of shape retention polymers. Column 5 teaches specifically the elected polymer of claim 13, as well as claims 14 and 15. The surfactants of claims 33 to 38 are taught on column 8. Columns 13 and 14 teach the spray dispensers of claims 45, 46 and 51 to 53.

Vogel et al. fail to expressly teach a particle diameter size of from about 10 to about 120 microns, as required by the claims. The top of column 13, however, teaches that a particle size of less than 200 microns is preferred. The various dispensers taught on columns 13 and 14 are the same as those disclosed by the specification as operable spray dispensers which result in particle sizes of from about 10 microns to about 120 microns.

In view of the fact that the preferred sprayers of Vogel et al. are the same as the preferred sprayers used by applicants to obtain the required particle diameter, and that particle size is inherently associated with the sprayer, it naturally follows that a composition being packaged and sprayed from the same sprayer will inherently have the same particle size. The particle size requirement of the claimed composition would appear to be inherently met by the composition of Vogel et al. in view of the fact that both compositions are being sprayed by the same sprayer. Note, for instance, that a preferred sprayer in Vogel, Guala® is preferred because of its fine uniform spray characteristics, and this is also a preferred sprayer of applicants.

On the other hand, the particle diameters disclosed on the top of column 13 embrace that claimed and thus one having ordinary skill in the art would have found the broadly claimed particle size range to have been within routine experimentation and/or optimization of the teachings of Vogel et al.

9. Claims 39 to 42, 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel et al.

With regards to the presence of a low molecular weight solvent as found in claim 39, note the teachings on column 12, lines 50 which suggest the addition of such a component, thereby rendering obvious these claims.

Art Unit: 1712

With regards to claims 49 and 50, while Vogel et al. do not specifically teach the inclusion of instructions with the packaged device, the Examiner notes that such products always come with instructions to aid in their utility. Thus the skilled artisan would have found the inclusion of instructions with the spray device of Vogel et al. to have been obvious.

10. Claims 1, 12 to 15, 33 to 42, 44 to 48, 51 to 55 are rejected under 35 U.S.C. 102(e) as being anticipated by Trinh et al.

Trinh et al. teach compositions for odor and wrinkle control. See for instance col. 31 and claims 12 to 14 which teach applicants' elected shape retention polymer. Also see column 40, lines 30 to 35, which teach the preferred particle diameter of the composition spray. This anticipates the instant claims. The surfactants of claims 33 to 38 are taught on the bottom of column 10 and the bottom of column 11. Column 36 teaches the presence and amounts of the solvent found in claims 39 to 41. Columns 41 and 42 teach the dispensers of claims 45 to 48 and 52 to 54.

11. Claims 49, 50 and 56 to 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trinh et al.

Trinh et al. teach using a spray dispenser to contain the composition, but again do not teach the inclusion of instructions. However wrinkle and odor controlling compositions marketed in spray dispensers are conventionally accompanied by a set of instructions to ensure proper usage of the composition. In view of this, one having ordinary skill in the art would have found the inclusion of instructions with the spray bottle to have been obvious. Note that the composition of Trinh et al. meets the claimed pH limitation of claim 56.

12. Claims 1, 12 to 15, 33 to 42, 44 to 57 and 59 to 63 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 41 of U.S. Patent No. 6,001,343. Although the conflicting claims are not identical, they are not patentably distinct from each other because the composition

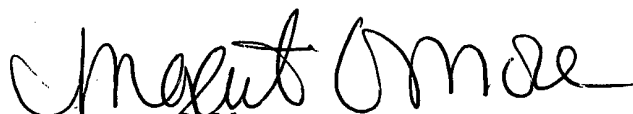
Art Unit: 1712

of '343 can include the shape retention polymer claimed (see claims 12 to 14 in '343) and the composition is packaged in a container that spray droplets having a diameter meeting that claimed (see claims 36 and 38). Also, while the article of manufacture in '343 does not include instructions, this would have been an obvious difference, for reasons noted supra.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret G. Moore whose telephone number is 703-308-4334. The examiner can normally be reached on Mon., Wed., Thurs. and Friday, 10am to 4pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson can be reached on 703-308-2340. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9311 for regular communications and 703-872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Margaret G. Moore  
Primary Examiner  
Art Unit 1712

mgm  
September 21, 2002